

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Nevins	Team: Team # 5	CCRB Case #: 200300748	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/27/2003 8:00 PM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 7/27/2004	EO SOL 7/27/2004	
Date/Time CV Reported Wed, 01/29/2003 1:45 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 01/29/2003 2:21 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Brian Mcgee	00000	898020	PSA 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Votino	10733	931389	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A.LT Brian Mcgee	Abuse: Lieutenant Brian Mcgee stopped and questioned § 87(2)(b)	§ 87(2)(b)

Synopsis

§ 87(2)(b) alleges that on 1/27/03 at approximately 8:00 PM, Lieutenant Brian McGee of P.S.A. #2 stopped and questioned his son, § 87(2)(b) inside of § 87(2)(b) a building within a public housing project in Brooklyn (**Allegation A**). § 87(2)(b) was subsequently arrested § 87(2)(b) § 87(2)(a) Fam. Ct. Act § 381.3 by Officer Anthony Votino of P.S.A. #2. § 87(2)(b) resides at § 87(2)(b) § 87(2)(b) with § 87(2)(b) § 87(2)(b), § 87(2)(g) § 87(2)(b), § 87(2)(g) § 87(2)(b), § 87(2)(g)

Summary of Complaint

January 29, 2003: § 87(2)(b) § 87(2)(b) § 87(2)(b)-old black male, reported his complaint regarding the arrest of his son § 87(2)(b) in-person at the 84th Precinct at 1:45 PM on this date (enc. 4).

February 5, 2003: The complainant § 87(2)(b) was interviewed on this date at his residence, § 87(2)(b) § 87(2)(b) in Brooklyn (enc. 5a-c). § 87(2)(b) wife § 87(2)(b) § 87(2)(b) received a call from the 73rd Precinct on 1/27/03 to inform her that their son § 87(2)(b) had been arrested § 87(2)(b), § 87(2)(a) and could be picked up at the station house. § 87(2)(b) repeatedly tried to call § 87(2)(b) but he turned off his phone every time she called. Eventually he did answer and went to the 73rd Precinct station house at approximately 11 PM. § 87(2)(b) waited for approximately two hours until a police officer brought § 87(2)(b) out to the front entrance area. The officer said that § 87(2)(b) was arrested because a supervisor wanted to “give a rookie a collar.” Officers present gave § 87(2)(b) a summons, and they stated that P.S.A. #2 officers were involved in the arrest.

§ 87(2)(b) explained that he and his wife let § 87(2)(b) play in the hallways of their building and adjoining buildings so that he does not play outside where it is not safe.

February 5, 2003: The victim § 87(2)(b) a § 87(2)(b)-old black male § 87(2)(b), was interviewed on this date at his residence, § 87(2)(b) § 87(2)(b) in Brooklyn (enc. 6a-c). On 1/27/03 at approximately 8:00 PM, § 87(2)(b) was on the second floor of a stairwell near a window within § 87(2)(b) waiting for a friend to join him. (The location of the incident was later determined by police officer testimony and police department documents to be § 87(2)(b). Two police officers, identified during the investigation as Lieutenant Brian McGee and Lieutenant John D’Adamo of P.S.A. #2, entered the hallway and asked him what he was doing (**Allegation A**). He told them, “I’m waiting for a friend.” The officers asked him, “Where does your friend live?” § 87(2)(b) replied, “In § 87(2)(b) § 87(2)(b).” The officers then asked him, “Why are you in this building?” § 87(2)(b) repeated, “I’m waiting for my friend.”

One of the officers asked § 87(2)(b) to put his hands up on the nearby window and frisked him. § 87(2)(b) § 87(2)(b) complied with the officer’s requests. The officer removed a hat, gloves and keys from § 87(2)(b) § 87(2)(b)’s pockets. The two officers led § 87(2)(b) down a stairwell where he was frisked against a wall again by a different officer. § 87(2)(b) was placed in handcuffs. He was led outside of the building where there was a marked RMP and he was placed inside of it. Two of the officers were in the car with him. A marked van arrived at the location with a few more officers inside of it. There was a total of five or six officers at the location. § 87(2)(b) was placed in the van and was transported to the 73rd Precinct station house. There was no crowd or anyone gathered who witnessed the incident, and § 87(2)(b) § 87(2)(b) was the only civilian in the van.

§ 87(2)(b) was first taken before the desk at the 73rd Precinct station house. He was subsequently taken to a back room, which looked like an office, where he remained handcuffed. Approximately twenty minutes after his arrival at the station house, an officer called § 87(2)(b)'s mother. § 87(2)(b)'s father § 87(2)(b) eventually came to the 73rd Precinct station house to pick him up at approximately 1:00 AM on 1/28/03. The officers informed § 87(2)(b) that he had been arrested § 87(2)(b), § 87(2)(a). He went to family court as a result of the incident.

Results of Investigation

Police Officer Interviews

Witness Officer Anthony Votino of P.S.A. #2

October 21, 2003: Officer Votino was interviewed at the CCRB on this date (enc. 7a-e). On 1/27/03, Officer Votino worked from 6:00 PM until 2:35 AM. He worked Van Dyke Housing Foot Post 1. According to his Memo Book, Officer Votino arrested § 87(2)(b) at 8:52 PM § 87(2)(b) § 87(2)(a) Fam. Ct. Act § 381.3. § 87(2)(b) was transported to the 73rd Precinct juvenile room and was subsequently released to § 87(2)(b) § 87(2)(b) at 12:45 AM. Officer Votino noted § 87(2)(b)'s father's name as § 87(2)(b) § 87(2)(b), though he is known as § 87(2)(b) in connection with this complaint.

Preceding the arrest, Officer Votino was performing a routine vertical patrol at § 87(2)(b) within the Van Dyke housing buildings. He received a call over the radio from Lieutenant Brian McGee to take an arrest at the incident location. Officer Votino was not able to state which building in the area he reported to, except that the building was within public housing. Officer Votino went to the front of the building in question where he found § 87(2)(b) in handcuffs standing next to a marked RMP. § 87(2)(b) was not placed inside of the RMP. A sergeant was at the location and transport § 87(2)(b) to the 73rd Precinct station house in a van. Officer Votino sat in the back with § 87(2)(b). There were no other prisoners in the van.

At the 73rd Precinct station house, Officer Votino frisked and searched § 87(2)(b). Officer Votino did not observe any other officer frisk or search § 87(2)(b) previously at the arrest location. Officer Votino filed the paperwork in connection with § 87(2)(b)'s arrest. Officer Votino waited for § 87(2)(b)'s father to pick him up. § 87(2)(b) eventually arrived at the station house and § 87(2)(b) was released to him. Officer Votino was present, as well as the desk sergeant. The Desk Appearance Ticket and related paperwork was given to § 87(2)(b). Officer Votino did not witness any statements made to § 87(2)(b) that indicated § 87(2)(b) had been arrested because "a rookie needed a collar."

Lieutenant Brian McGee stopped § 87(2)(b) § 87(2)(a) Fam. Ct. Act § 381.3. Officer Votino appeared several months later in court § 87(2)(b).

Subject Officer Lieutenant Brian McGee of P.S.A. #2

January 12, 2004: Lieutenant McGee was interviewed at the CCRB on this date (enc. 8a-d). On 1/27/03, Lieutenant McGee worked as the P.S.A. #2 Impact Supervisor with Lieutenant John D'Adamo from 6:00 PM until 2:35 AM. Lieutenant McGee was in uniform and was assigned to marked RMP #9769. According to his Memo Book, § 87(2)(b) a § 87(2)(b)-old black male, DOB § 87(2)(b), was arrested at 8:40 PM § 87(2)(a) Fam. Ct. Act § 381.3 at § 87(2)(b) § 87(2)(b) resides at § 87(2)(b) § 87(2)(b).

Lieutenant McGee was on patrol with Lieutenant D'Adamo. They received a report over the radio from Captain Valentim Neves that a black male individual was walking down § 87(2)(b) looking into parked cars and that this individual had gone into § 87(2)(b). Lieutenant McGee and Lieutenant D'Adamo went to the location where they observed a black male on the second floor of a stairwell leaning against a window looking out onto § 87(2)(b). The officers entered the location and stopped the male, § 87(2)(b) § 87(2)(b). They asked him if everything was all right. § 87(2)(b) said that he was fine and that he was

waiting for a friend. The officers asked him if he lived in the building. § 87(2)(b) said that he did not and provided his address as § 87(2)(b). The officers then asked him where his friend lived. § 87(2)(b) provided an address on § 87(2)(b). The officers asked him if he knew anyone or was visiting anyone in § 87(2)(b). § 87(2)(b) said that he did not know anyone and that he was not visiting anyone in the building. Lieutenant McGee explained that the incident location was reported incorrectly by the complainant as § 87(2)(b). § 87(2)(b) was not found at that location, but at § 87(2)(b), a totally separate and distinct building from § 87(2)(b).

The officers explained to § 87(2)(b) that he would be arrested § 87(2)(b). He was placed in handcuffs. Lieutenant McGee could not recall if he or Lieutenant D'Adamo frisked § 87(2)(b) but one of them performed this in the stairwell. § 87(2)(b) did not offer any resistance. Officer Votino reported to the location to serve as the arresting officer and transport § 87(2)(b) to the 73rd Precinct station house. Lieutenant McGee could not recall what type of vehicle § 87(2)(b) was secured in for transport. Lieutenant McGee resumed patrol.

§ 87(2)(g)

Police Department Documents Sprint Job M12235

According to Sprint Job M12235 (enc. 9), an arrest of an individual was made at 8:46 PM and verified at 8:52 PM on 1/27/03 at § 87(2)(b).

73rd Precinct Command Log

According to the 73rd Precinct Command Log for 1/27/03 (enc. 10), § 87(2)(b) was arrested by Officer Votino § 87(2)(a) Fam. Ct. Act § 381.3 at § 87(2)(b) at 8:55 PM. His physical and mental condition is noted as "good." It is noted that § 87(2)(b) was released to his father § 87(2)(b) at 12:55 AM on 1/28/03.

Arrest Report, Arrest ID § 87(2)(b)

§ 87(2)(a) Fam. Ct. Act § 381.3

73rd Precinct Desk Appearance Ticket Log

§ 87(2)(b)'s Desk Appearance Ticket was not noted in the 73rd Precinct Desk Appearance Ticket Log for 1/27/03 (enc. 12).

P.S.A. #2 Roll Call, Tour 3

According to the P.S.A. #2 Roll Call for Tour 3 on 1/27/03 (enc. 13a-k), Lieutenant McGee worked as the Platoon Commander on that date. Officer Votino was assigned to Operation Impact. Lieutenant D'Adamo is not listed on this unfinalized Roll Call.

Civilian Criminal Conviction History and Subject Officer CCRB History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Lieutenant McGee has no previous substantiated CCRB allegations, and this is his first CCRB complaint. He has been a member of the force for thirteen years (enc. 1).

Conclusions and Recommendations

Officer Identification

Lieutenant McGee admitted to stopping § 87(2)(b) and therefore this allegation is pled against him.

Established Facts

§ 87(2)(b) was on the second floor of a stairwell inside of a building within a public housing project that was not the building of his residence at approximately 8:00 PM on 1/27/03. § 87(2)(b) was stopped by Lieutenant McGee, who asked him why he was in the building. § 87(2)(b) told Lieutenant McGee that he was waiting for a friend who does not live in the building. § 87(2)(b) was handcuffed, frisked and arrested § 87(2)(b).

Issues in Dispute

§ 87(2)(b) stated that he was stopped inside of § 87(2)(b). Lieutenant McGee stated that he stopped § 87(2)(b) inside of § 87(2)(b). Lieutenant McGee's Memo Book, the Sprint Printout and the paperwork filed in connection with § 87(2)(b)'s arrest reflect the § 87(2)(b) address.

Credibility

§ 87(2)(b), § 87(2)(g)

Allegation A: Lieutenant Brian McGee stopped and questioned § 87(2)(b)

According to Penal Law 140.10 (enc. A), "A person is guilty of trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property...where the building is used as a public housing project in violation of conspicuously posted rules or regulations governing entry and use thereof." Lieutenant McGee found § 87(2)(b) loitering in the stairwell. § 87(2)(b) admitted to Lieutenant McGee that the location in question was not his residence or the residence of the individual he was waiting for. § 87(2)(a) Fam. Ct. Act § 381.3

As Lieutenant McGee articulated that he became aware of § 87(2)(b)'s presence at the incident location due to a report of suspicious activity, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: